

Erica Loftis Pacheco, Esq. WSBA #44308
GHIDOTTI BERGER, LLP
144 Railroad Ave., Ste. 236
Edmonds, WA 98020-4100
Ph: (206) 331-3280
Fax: (949) 427-2732
bknotifications@ghidottiberger.com

Attorney for Secured Creditor
U.S. Bank Trust, N.A., as Trustee of the SCIG Series III Trust

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON - SEATTLE DIVISION

In Re:) CASE NO.: 16-13111-TWD
)
Kurt G VanDyke) CHAPTER 13
and Michelle E VanDyke,)
) **RESPONSE TO OBJECTION TO**
) **NOTICE OF MORTGAGE**
Debtors.) **PAYMENT CHANGE**

Hearing:

Date: 10/20/2021

Time: 9:30 A.M.

Judge: Timothy W. Dore

TO ALL PARTIES IN INTEREST AND TO THEIR ATTORNEYS OF RECORD:

U.S. Bank Trust, N.A. as Trustee of the SCIG Series III Trust with BSI Financial
Services as servicer, ("Secured Creditor") in the above-entitled Bankruptcy proceeding,

1 hereby submits the following Opposition to Objection to Notice of Mortgage Payment Change
2 (“Objection”) filed by Debtors, Kurt and Michelle VanDyke (“Debtors”) as docket entry 115.

3
4 **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

5 On or about April 11, 2005, Debtor Kurt VanDyke executed a Promissory Note in the
6 original principal amount of \$174,503.00, which was secured by an agreed first priority Deed of
7 Trust encumbering the real property commonly known as 10128 16th Avenue South, Seattle
8 WA 98168 (the “Property”). As reflected in the filed Proof of Claim, at the time of bankruptcy
9 filing, Debtor owed a total balance of \$83,137.34 with \$3,710.15 in prepetition arrearages. *See*
10 Claim 9-1. The ongoing monthly mortgage payment at the time of filing was \$720.76. *Id.*

11
12 On September 16, 2016, the Court entered its Order Confirming Chapter 13 Plan,
13 pursuant to which Debtor’s Amended Plan, docket entry 27 (the “Plan”). The Plan provided for
14 the Trustee to make ongoing monthly mortgage payments as well as cure payments on the
15 mortgage loan. The Plan also authorized the Trustee to “increase or decrease post-petition
16 installments for ongoing mortgage payments, homeowner’s dues and/or real property tax
17 holding accounts based on changes in interest rates, escrow amounts, dues and/or property
18 taxes.”

19
20 On December 28, 2016, Debtors filed an Amended Plan, docket entry 35, which did not
21 alter the treatment of the mortgage claim. On March 10, 2017, the Court entered its Order
22 Approving Post-Confirmation Modification of Plan, docket entry 46.

23
24 On June 1, 2017, Secured Creditor’s predecessor in interest and original claimant,
25 Bayview Loan Servicing, LLC, filed a Notice of Mortgage Payment Change reflecting an
26 increase in escrow from \$276.97 to \$301.41. The Escrow Analysis included was based in part
27 on Hazard Insurance in the amount of \$803.00.
28

1 On May 22, 2018, a Transfer of Claim was filed evidencing the transfer from predecessor
2 and original claimant, Bayview Loan Servicing LLC, to Secured Creditor. The new servicer of
3 the loan was identified as BSI Financial Services (“BSI”).
4

5 On May 30, 2018, Debtors filed an Amended Plan, docket entry 60, which did not alter
6 the treatment of the mortgage claim other than increasing the amount of the ongoing monthly
7 payment to the amount identified in the Payment Change Notice filed on June 1, 2017. On
8 July 16, 2018, the Court entered its Order Approving Post-Confirmation Modification of Plan,
9 docket entry 69.
10

11 On May 9, 2019, Secured Creditor filed a Notice of Payment Change reflecting an
12 increase in escrow from the then current \$301.41 per month to \$353.08 per month effective
13 June 1, 2019. The Escrow Analysis included was based in part on Homeowner’s Insurance in
14 the amount of \$527.00.
15

16 On October 8, 2019, Debtors filed an Amended Plan, docket entry 73, which did not alter
17 the treatment of the mortgage claim other than increasing the amount of the ongoing monthly
18 payment to the amount identified in the Payment Change Notice filed on May 9, 2019. On
19 November 4, 2019, the Court entered its Order Approving Post-Confirmation Modification of
20 Plan, docket entry 80.
21

22 On May 8, 2020, Secured Creditor filed a Notice of Payment Change reflecting an
23 increase in escrow from the then current \$353.08 to \$368.82 per month effective June 1, 2020.
24 The Escrow Analysis included was based in part on Homeowner’s Insurance in the amount of
25 \$535.00.
26

27 On September 8, 2020, Debtors filed an Amended Plan, docket entry 83 (the “Operative
28 Plan”), which did not alter the treatment of the mortgage claim other than increasing the amount
of the ongoing monthly payment to the amount identified in the Payment Change Notice filed

1 on May 8, 2020. On October 2, 2020, the Court entered its Order Approving Post-Confirmation
2 Modification of Plan, docket entry 93.

3 On May 7, 2021, Secured Creditor filed a Notice of Payment Change reflecting an
4 increase in escrow from the then current \$368.82 to \$478.38 per month effective June 1, 2021.
5 The Escrow Analysis included was based in part on the Forced Placed Homeowner's Insurance
6 policy in the amount of \$1,734.00.

7 Debtors' Objection, at its core, acknowledges there is a current forced placed
8 homeowner's insurance policy, but argues Debtors should not be liable for the increased cost
9 associated therewith because BSI should have renewed the existing standard policy. BSI has
10 reviewed this loan file in detail since the issue was first raised by Debtors' Counsel and maintains
11 it did not receive Safeco's notice of renewal. Accepting Debtors' offered Exhibit 1 for purposes
12 of this Response, the Notice from Safeco states it was sent to BSI, Isada / Atima at PO Box
13 961260, Ft Worth TX 76161 on or about October 11, 2020. A copy of that Renewal Notice was
14 also sent to Debtors, as they acknowledge and provide that copy with their instant Objection.
15
16
17

18 ARGUMENT

19 Pursuant to FRBP 3002.1(b), Secured Creditor is required to file and serve a notice of
20 "any change in the payment amount, including any change that results from an interest rate or
21 escrow account adjustment, no later than 21 days before a payment in the new amount is due."
22 As detailed above, Secured Creditor and its predecessor-in-interest have filed notices of payment
23 changes annually, each of which reflected an increase in the escrow portion of the monthly
24 mortgage payment and disclosed the amount paid for homeowners insurance on the Property.
25 The Payment Change Notice to which Debtors object was filed on May 7, 2021 and gave notice
26 of a change that became effective on June 1, 2021. The Payment Change Notice was filed 25
27 days prior to the effective date of the payment change and, therefore, was timely filed.
28

1 Pursuant to the Deed of Trust executed by Debtors, the Debtors are required to “keep the
2 improvements now existing or hereafter erected on the Property insured against loss by fire,
3 hazards including within the term ‘extended coverage,’ and any other hazards...” See Claim
4 9-1, p. 15, Section 5. The Deed of Trust also states,
5

6 If Borrower fails to maintain any of the coverages described above, Lender may
7 obtain insurance coverage, at Lender’s option and Borrower’s expense. Lender
8 is under no obligation to purchase any particular type or amount of coverage.
9 Therefore, such coverage shall cover Lender, but might or might not protect
10 Borrower, Borrower’s equity in the Property, or the contents of the Property,
11 against any risk, hazard or liability and might provide greater or lesser coverage
12 than was previously in effect. Borrower acknowledges that the cost of the
13 insurance coverage so obtained might significantly exceed the cost of insurance
14 that Borrower could have obtained. Any amounts disbursed by Lender under this
15 Section 5 shall become additional debt of Borrower secured by this Security
16 Instrument.

17 *Id.* (emphasis added). With respect to the payment of escrow items, the Deed of Trust requires
18 the Debtors to pay the “premiums for any and all insurance required by Lender under Section 5”
19 and states, “Borrower shall promptly furnish to Lender all notices of amounts to be paid under
20 this Section.” *Id.*, p. 13-14, Section 3 (emphasis added). Finally, the Deed of Trust, states,
21

22 If...Borrower fails to perform the covenants and agreements contained in this
23 Security Instrument,..then Lender may do and pay for whatever is reasonable or
24 appropriate to protect Lender’s interest in the Property and rights under this
25 Security Instrument...Any amounts disbursed by Lender under this Section 9
26 shall become additional debt of Borrower secured by this Security Instrument.

27 *Id.*, p. 17, Section 9.

28 As such, Debtors have a duty under the Deed of Trust to maintain insurance on the
Property, pay for insurance coverage obtained by the lender, and promptly provide all notices of
escrow amounts to be paid to the lender. In addition, the Plan and Amended Plans approved by
this Court did not alter Debtors’ obligations under the Note and Deed of Trust other than to
permit Debtors to cure the arrears owed on the loan over the Plan term.

As noted above, BSI did not receive the notice of renewal of the insurance policy, which
was attached to the Objection. However, Debtors did receive the notice of renewal and failed to

1 comply with the obligation to provide that notice to BSI in a prompt manner. Their failure to
2 comply with their obligations resulted in the cancellation of the policy and placement of the
3 more expensive, less comprehensive policy of which they now complain. Debtors have failed
4 to establish any basis upon which to disallow the Payment Change Notice and the Court should
5 deny the Objection.
6

7 **CONCLUSION**

8 Based on the foregoing, Secured Creditor respectfully requests that the Objection to
9 Payment Change Notice filed by the Debtors be denied. Secured Creditor reserves the right to
10 supplement this Response.
11

12 WHEREFORE, Secured Creditor prays as follows:

- 13 1. That the Debtors' Objection Payment Change Notice be denied, and
14 2. For such other relief as this Court deems proper.

15 Dated: October 13, 2021

GHIDOTTI BERGER, LLP

17 /s/ Erica Loftis Pacheco

18 Erica Loftis Pacheco, Esq.

19 Counsel for Secured Creditor
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1 **CERTIFICATE OF SERVICE**

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3 On October 13, 2021, I served the foregoing documents described as **RESPONSE TO**
4 **OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE** on the following
5 individuals by depositing true copies thereof in the United States mail at Santa Ana, California
6 enclosed in a sealed envelope, with postage paid, addressed as follows:
7

8 DEBTORS:

9 Kurt G. VanDyke
10 Michelle E VanDyke
11 10128 16th Avenue S
Seattle, WA 98168

12 DEBTORS COUNSEL:

13 Rochelle Shuffield
14 Shuffield Bankruptcy Law
15 14900 Interurban Avenue S
Suite 287
Renton, WA 98168

16 TRUSTEE:

17 Jason Wilson-Aguilar
18 600 University St #1300
Seattle, WA 98101

19 US TRUSTEE

20 United States Trustee
21 700 Stewart St. Ste 5103
Seattle, WA 98101

22
23 **I declare under penalty of perjury under the laws of the United States of America**
24 **that the foregoing is true and correct.**

25 /s/ Ana Palacios
26 Ana Palacios
27
28